

A natural dietary supplement could classify as a food taxed at the low rate of tax if it is not sold for immediate or on-site consumption. It could also classify as a drug taxed at the lower rate if the dietary supplement purports to have medicinal qualities. See 86 Ill. Adm. Code Section 130.310. (This is a GIL).

August 28, 2000

Dear Xxxxx:

This is in response to your letter dated April 26, 2000. We regret the delay in responding to your request. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We were questioning the taxability status of our new product 'NAME'. Enclosed you will find a copy of the 'NAME' label along with a detailed description of our new product. We would greatly appreciate if you could render a ruling in writing as to whether our product is taxable or not in your state.

We thank you in advance for your help and should you require any further information regarding this matter, please feel free to contact me at #####.

For your information and reference please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus any applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold, drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular state sales tax rate of 6.25%, plus any applicable local taxes.

The regulations define a food as "any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice". See, Section 130.310(b)(1).

Taxation of food at the reduced sales tax rate of 1% depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold, therefore, the nature of the premises in which the food is sold is a factor in determining the sales tax rate. Retail establishments that sell food prepared for immediate consumption or prepare food and provide

facilities for on -site consumption of the food sold, such as restaurants or cafeterias, are subject to the higher sales tax rate. Where an establishment primarily sells food (over 50%) in bulk, such establishment will incur the reduced rate on all items, except soft drinks and food prepared for immediate consumption, which are always taxed at the higher tax rate. If, however, such establishment also provides on-site premises for immediate consumption of food sold, then all sales will be subject to the higher sales tax rate unless the establishment physically partitions such area away from the food sold for off-site consumption and utilizes a separate means of accounting for and recording sales of the food sold in the on-site consumption area.

A medicine or drug qualifying for the exemption is "any pill, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities". See, 86 Ill. Adm. Code 130.310.

Under the definitions of food and medicine or drug provided in the regulations, a natural dietary supplement could classify as a food taxed at the low rate of tax if it is not sold for immediate or on-site consumption. It could also classify as a drug taxed at the lower rate if the dietary supplement purports to have medicinal qualities.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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Enc.